

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DONALD MCKAY HALE, JR.,

Petitioner,

v.

CIVIL ACTION NO. 2:03-2269
(Criminal No. 2:00-00222-05)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court is the petitioner's motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner's § 2255 motion.

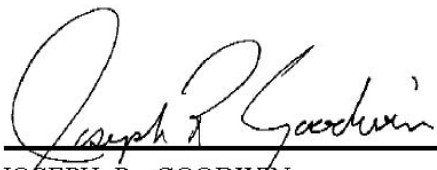
The petitioner, Donald McHale Henry, Jr., is serving a 151-month prison term for his conviction by a jury of conspiracy to distribute less than five grams of cocaine base and possession with intent to distribute cocaine base in violation of 21 U.S.C. §§ 846 and 841(a)(1). The petitioner requests relief on the following four grounds: (1) ineffective assistance of counsel during the guilt phase of his case; (2) ineffective assistance of counsel during the sentencing phase of his case; (3) denial of his right to counsel in making an informed and voluntary decision whether to plead guilty or proceed to trial; and (4) denial of his right to a jury trial when the sentencing court enhanced his sentence by making factual determinations based on the preponderance of evidence standard.

In his objections to the to the proposed findings and recommendation, the petitioner asserted, for the first time, that his counsel's alleged failure to inform him of a proposed plea agreement prejudiced him by increasing his guideline range. I determined that it was necessary to conduct an evidentiary hearing on the issue of whether the petitioner's counsel advised him of an offered plea agreement. I referred the matter to Magistrate Judge Stanley, who held the evidentiary hearing. She found that the petitioner's testimony was not credible.

After reviewing all of the petitioner's objections *de novo*, the court **FINDS** that his objections are without merit. Accordingly, the court **ADOPTS** and incorporates herein both the findings and recommendations of the Magistrate Judge, and **DENIES** the petitioner's § 2255 motion.

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: March 23, 2007



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE